

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7591

BILL NUMBER: HB 1408

NOTE PREPARED: Jan 11, 2009

BILL AMENDED:

SUBJECT: Mortgage Lending Practices.

FIRST AUTHOR: Rep. Reske

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Prohibitions-* The bill prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan without first making a good faith inquiry into the borrower's ability to repay the loan at the loan's full monthly cost. The bill prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan that is a stated income or no documentation loan. The bill provides that in the case of a residential mortgage loan that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty.

DFI Rules- The bill requires the Department of Financial Institutions (DFI) to adopt rules to: (1) establish a duty of care owed by mortgage servicers to debtors in first lien mortgage transactions in Indiana; and (2) require mortgage servicers that service first lien mortgage transactions in Indiana to report annually to the DFI and to the Indiana Housing and Community Development Authority (IHCDA) certain information about the servicers' outstanding loans in Indiana.

Funding- The bill provides that if the total amount in the Investigative Fund (IF) administered by the Attorney General (AG) and the Professional Licensing Agency (PLA) to investigate real estate and real estate appraisal fraud exceeds \$750,000 at the end of a state fiscal year: (1) 50% of the amount exceeding \$750,000 remains in the IF; and (2) 50% of the amount exceeding \$750,000 shall be deposited in the Home Ownership Education Account (HOEA) administered by the IHCDA. (Current law provides that any amount remaining in the fund at the end of a state fiscal year that exceeds \$750,000 reverts to the state General Fund.)

Foreclosure Proceedings- The bill extends the period in a residential mortgage foreclosure proceeding during which process may not issue for the execution of a judgment or decree of sale from three months to 120 days

after the filing of the complaint.

Home Ownership Preservation Task Force (HOPTF)- The bill establishes the HOPTF that consists of: (1) the Director of the DFI; (2) the executive director of the IHCD; and (3) 13 voting members appointed by the Governor. The bill provides that the director of the DFI and the executive director of the IHCD serve as co-chairs and nonvoting members of the task force. The bill requires the HOPTF to conduct at least five meetings before November 15, 2009, and to do the following: (1) Identify new sources of federal funding that can be used to assist Indiana homeowners or communities that are affected by residential mortgage loan foreclosures. (2) Identify any other new or existing sources of federal, state, or private funding that can be used for, or redirected to, those purposes. (3) Identify methods and sources of available funding to promote the IHCD's mortgage foreclosure counseling and education program. (4) Make recommendations for any state legislation, rules, or programs that the task force determines are necessary to assist Indiana homeowners or communities that are affected by residential mortgage loan foreclosures. The bill requires the task force to submit a report to: (1) the Legislative Council; and (2) the members of the Legislative standing committees that have jurisdiction over legislation concerning financial institutions.

Pro Bono Foreclosure Assistance Task Force (PBFATF)- The bill establishes the PBFATF that consists of: (1) the Chief Justice of the Supreme Court, or the Chief Justice's designee, who serves as chair of the task force; (2) the president of the Indiana state bar association, or the president's designee; and (3) 15 members appointed by the Chief Justice. The bill requires the PBFATF to determine the feasibility of developing, implementing, administering, and promoting a statewide program to provide pro bono legal assistance to Indiana home owners involved in foreclosure proceedings filed in Indiana courts. The bill requires the task force to report its findings and recommendations to: (1) the Legislative Council; and (2) the members of the Legislative standing committees that have jurisdiction over legislation concerning financial institutions.

Effective Date: Upon passage; July 1, 2009.

Explanation of State Expenditures: *Prohibitions-* The AG's Homeowner Protection Unit (HPU) may conduct additional investigations as a result of this provision. The HPU is funded from proceeds to the IF.

DFI Rules- The DFI Board would have to meet to pass the rules required by the bill. The DFI Board met seven times during CY 2008. Members receive per diem and travel expense for their service to the Board.

Home Ownership Preservation Task Force (HOPTF)- Pro Bono Foreclosure Assistance Task Force (PBFATF)- Members of both task forces would be eligible for reimbursement for travel and for costs attributed to a member's duties.

Background Information- The AG reverted \$173,490 at the close of FY 2008, \$0 in FY 2007, \$34,631 in FY 2006, and \$46,010 in FY 2005 to the General Fund. The HPU was appropriated \$63,391 from the state General Fund for FY 2009 operation.

Explanation of State Revenues: *Funding- General Fund Implications-* The bill would stop reversions from the IF as required under current law. Therefore, the General Fund would see a reduction in revenue in those fiscal years that the IF balance exceeds \$750,000.

HOEA- The HOEA would receive 50% of the remaining amount exceeding \$750,000 as a result of the proposal.

IF- The IF would retain the remaining 50% of the revenue in the IF above \$750,000 at the end of a fiscal year.

Background Information- The IF at the close of FY 2008 had an undesignated fund balance of \$300,860.

Explanation of Local Expenditures: *Foreclosure Proceedings-* This provision could extend a proceeding for up to 30 days if the right qualifications are met as specified by the bill.

Explanation of Local Revenues:

State Agencies Affected: AG; IHCDA; DFI

Local Agencies Affected: Trial courts.

Information Sources: Indiana State Budget Agency: *General and Rainy Day Fund Summaries, June 30, 2008*; Auditor's Data; *State of Indiana List of Appropriations Made by the 2007 Indiana General Assembly for the Biennium July 1, 2007, to June 30, 2009.*

Fiscal Analyst: Chris Baker, 317-232-9851.